THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 5304 OF 1995

Date: 12.06.2006

Between:

P. Malakondayya.

… Petitioner

and

Hindustan Ship Yard Ltd., rep.,by its Chairman and Managing Director, Visakhapatnam.

… Respondent.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 5304 OF 1995

JUDGMENT:

The contractor, who was running the canteen in the respondent company, seeks a mandamus from this Court to declare that the workmen employed by him in the canteen were in fact the employees of the respondent company and that the respondent was alone liable for payment of their salaries. The petitioner herein, seeks a consequential direction for payment of the bills withheld from

payment by the respondent company.

The question as to whether employees working in a statutory canteen, under Section 46 of the Factories Act, would become employees of the respondent company does not call for examination in a writ petition filed by the contractor. It would have been a different matter altogether if the aggrieved canteen employees had approached this Court. The present writ petition filed by the contractor is only to avoid payment of the amounts due to the canteen employees engaged by it and is clearly an abuse of process of Court. The action of the respondents in withholding the bills payable to the contractor with a view to ensure that the amounts due to the workmen engaged by the contractor in the respondent's canteen are settled, cannot be faulted.

Reliance placed by Sri B.M. Patro, learned Counsel for the petitioner, on **Haldia Rifenery Canteen Employees Union Vs. M/s Indian Oil Corporation Ltd** is misplaced. In the said judgment the Supreme Court, relying on its earlier judgment in **Industrial Petrochemicals Corporation Ltd. Vs. Shramik Sena**, held thus:

"In Indian Petrochemicals Corporation Ltd. (supra) this Court after analyzing the earlier judgments on the same point has held that the workmen working in the canteen becomes the workers of the establishment for the purposes of Factories Act only and not for any other purpose. They do not become the employees of the management for any other purpose entitling them for absorption into the service of the principal employer. Factors which persuaded this Court in Indian Petrochemicals Corporation Ltd. Case (supra) to take employees of the management are missing in the present case. No power vests in the management either to make the appointment or to take disciplinary action against the erring workmen and their dismissal or removal from service. The management is not reimbursing to the contractor the wages of the workmen. On these facts, it cannot be concluded that the contractor was nothing but an agent or a manager of the respondent working completely under the supervision and control of the management."

The law laid down in **Haldia Rifenery Canteen Employees Union**[1] is that employees engaged by the contractor in the canteen are his employees.

Sri B.M. Patro, learned Counsel for the petitioner submits that the respondents ought not to have withheld the bills payable to the petitioner without putting the petitioner on prior notice. The question, as to whether the amounts withheld are in fact liable to be paid to the petitioner, fall in the realm of contractual disputes and such money claims are better suited for adjudication in proceedings before

the civil Court of competent jurisdiction and not in writ proceedings under Article 226 of the Constitution of India. The writ petition as filed is without merit and is accordingly dismissed. However, in the circumstances without costs.

Date: 12.06.2006 RAMESH RANGANATHAN, J

MRKR